

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

Proceedings by the Commissioner)
of Banking and Insurance, State)
of New Jersey, to fine, suspend)
and/or revoke the insurance producer)
license of Avelino C. Andrade,)
Reference No. 8019882)
_____)

CONSENT ORDER

TO: Avelino C. Andrade
c/o Glenn M. Race, Esq.
Law Offices of Howard S. Teitelbaum, LLC
1076 Highway 18
East Brunswick, New Jersey 08816

THIS MATTER having been opened by the Commissioner of Banking and Insurance (“Commissioner”), State of New Jersey, upon issuance of Order to Show Cause No. E18-36 (“Order to Show Cause”) alleging that Avelino C. Andrade (“Respondent”), may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, Respondent was previously licensed as a resident producer pursuant to N.J.S.A. 17:22A-32(a) but his license was suspended effective April 4, 2019 by Order No. E19-40; and

WHEREAS, Respondent is subject to the provisions of the New Jersey Insurance Producer Licensing Act of 2001, N.J.S.A. 17:22A-26 to -48 (“Producer Act”), and the regulations governing Insurance Producer Standards of Conduct, N.J.A.C. 11:17A-1.1 to 11:17D-2.8; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a)(2), an insurance producer shall not violate any insurance law, regulation, subpoena, or order of the Commissioner or of another state's insurance regulator; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a)(4), an insurance producer shall not improperly withhold, misappropriate or convert any monies or properties received in the course of doing insurance business; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a)(8), an insurance producer shall not use fraudulent, coercive or dishonest business practices, or demonstrate incompetence, untrustworthiness or financial irresponsibility in the conduct of insurance business in this State or elsewhere; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a)(16), an insurance producer shall not commit any fraudulent act; and

WHEREAS, pursuant to N.J.A.C. 11:17A-4.10, an insurance producer acts in a fiduciary capacity in the conduct of his or her insurance business; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.1(a), all premium funds shall be held by an insurance producer in a fiduciary capacity and shall not be misappropriated, improperly converted to the insurance producer's own use, or illegally withheld by the licensee; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.1(b), all premium funds shall be segregated and not in any manner commingled with any other funds of the insurance producer, except as may be permitted by N.J.A.C. 11:17C-1.1 to -2.6; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.2(a), all premium funds shall be remitted to the insurer or other insurance producer, as applicable, within five business days after receipt of the funds except as otherwise required or provided by any of the following: (1) the insurance

producer's contract with the insurer or written agreement with the insured; (2) any controlling statute or administrative rule; or (3) the rules of any residual market mechanism created by or pursuant to any statute; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.3(a), an insurance producer shall establish and maintain a trust account into which shall be deposited cash, checks and other instruments payable to the insurance producer under the following circumstances: (1) when an insurance producer holds any premiums for more than five business days before remitting the premiums to an insurer or other insurance producer, pursuant to N.J.A.C. 11:17C-2.2(a)(1) through (3); or (2) when an insurance producer deposits any collected premiums into a financial institution account or other investment, or otherwise uses the premiums, even though the premiums are remitted within five business days; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.4(a), each insurance producer shall issue a receipt for each premium for any payment, premium deposit or installment payment which is submitted by personal delivery or when a receipt is requested, and shall maintain a copy of each receipt issued; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.5(a), each insurance producer shall maintain accurate books and records reflecting all insurance-related transactions in which the insurance producer or his employees take part; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.6(b), all records, books and documents required to be maintained by the provisions of N.J.A.C. 11:17C-1.2 to -2.6 shall, upon his or her request, be produced for examination by the Commissioner or his or her duly authorized representatives; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a), the Commissioner may place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license, and may levy a civil penalty, for a violation of the Producer Act; and

WHEREAS, pursuant to N.J.S.A. 17:22A-45(c), any person violating the Producer Act is subject to fines of up to \$5,000.00 for the first offense, and up to \$10,000.00 for each subsequent offense; moreover, the Commissioner may order restitution of moneys owed any person and reimbursement of costs of the investigation and prosecution; and

WHEREAS, on or about August 9, 1996, the Commissioner and Respondent entered into Consent Order No. E96-259 wherein the Respondent was fined \$7,500 for violations of the Producer Act; and

WHEREAS, on April 20, 2018, the Commissioner issued the Order to Show Cause alleging violations of the Producer Act by Respondent as set forth in the following count:

COUNT ONE

IT APPEARING, that Respondent sold automobile insurance policies to consumers through the New Jersey Personal Automobile Insurance Plan ("NJPAIP"), the assigned risk mechanism for drivers unable to obtain coverage in the New Jersey auto insurance voluntary market; and

IT FURTHER APPEARING, that on or about May 6, 2015, Respondent solicited and sold an NJPAIP policy to client "CLD"; and

IT FURTHER APPEARING, that on or about May 6, 2015, Respondent received from CLD the full first year premium payment of \$360 to be used to bind coverage; and

IT FURTHER APPEARING, that on or about May 6, 2015, Respondent transmitted to NJPAIP a completed insurance application for CLD along with the minimum premium deposit of \$180 plus a \$5 installment fee; and

IT FURTHER APPEARING, that on or about May 29, 2015, National Continental Insurance Company ("Continental") issued to CLD an automobile insurance policy effective from May 29, 2015 through May 29, 2016; and

IT FURTHER APPEARING, that on or about September 25, 2015, Continental sent a notice to Respondent and CLD that the residual premium balance of \$180 for CLD's policy was due by October 26, 2015; and

IT FURTHER APPEARING, that neither Respondent nor CLD remitted to NJPAIP the residual balance of \$180; and

IT FURTHER APPEARING, that on or about October 30, 2015, Continental sent a notice to Respondent and CLD that Continental would terminate CLD's policy effective November 28, 2015 for nonpayment of premium; and

IT FURTHER APPEARING, that on or about November 28, 2015, Continental terminated CLD's insurance policy for nonpayment of the residual premium balance; and

IT FURTHER APPEARING, that Respondent misappropriated and failed to remit premium to an insurer, and allowed CLD's policy to be terminated for failure to make payment, in violation of N.J.S.A. 17:22A-40(a)(2), (4), (8), and (16), N.J.A.C. 11:17A-4.10, N.J.A.C. 11:17C-2.1(a), and N.J.A.C. 11:17C-2.2(a); and

COUNT TWO

IT FURTHER APPEARING, that Respondent paid the following premium payments to NJPAIP which were dishonored by Respondent's bank for Non-Sufficient Funds ("NSF"):

Check No.	Check Amount	Applicant's Initials	Policy No. (last 6 digits)	Check Returned as NSF
1817	\$ 185.00	JR	3621-16	1/20/2016
1820	\$ 185.00	CJ	4516-16	1/21/2016
1821	\$ 185.00	ZO	4509-16	1/21/2016
1822	\$ 185.00	ABL	4512-16	1/21/2016
1823	\$ 185.00	AF	5694-16	1/21/2016
1829	\$ 185.00	EMB	6079-15	1/26/2016

IT FURTHER APPEARING, that Respondent issued six checks for the payment of premiums that were dishonored by Respondent's bank for NSF, in violation of N.J.S.A. 17:22A-40(a)(2), (4), (8), and (16), N.J.A.C. 11:17A-4.10, N.J.A.C. 11:17C-2.1(a), and N.J.A.C. 11:17C-2.2(a); and

COUNT THREE

IT FURTHER APPEARING, that the six dishonored checks were issued from Respondent's business account, which was used for the payment of business expenses; and

IT FURTHER APPEARING, that at the time Respondent issued the six checks, Respondent did not maintain a trust account; and

IT FURTHER APPEARING, that Respondent issued six checks for the payment of premiums from a non-trust account, commingled premium funds with other funds, and failed to maintain a trust account, in violation of N.J.S.A. 17:22A-40(a)(2), and (8), N.J.A.C. 11:17C-2.1(b), and N.J.A.C. 11:17C-2.3(a); and

COUNT FOUR

IT FURTHER APPEARING, that the Commissioner requested that Respondent produce copies of the receipts that Respondent issued to clients ZO, EMB, ABL, CJ, AF, and JR for their premium payments; and

IT FURTHER APPEARING, that Respondent did not maintain copies of the requested receipts; and

IT FURTHER APPEARING, that Respondent failed to maintain copies of receipts, in violation of N.J.S.A. 17:22A-40(a)(2), N.J.A.C. 11:17C-2.5(a), and N.J.A.C. 11:17C-2.6(b); and

WHEREAS, on or about May 7, 2018, Respondent submitted an answer to the Order to Show Cause and request for a hearing; and

WHEREAS, the matter was thereafter transmitted to the Office of Administrative Law as a contested case; and

WHEREAS, on December 12, 2018, the Department filed a motion for summary decision; and

WHEREAS, on December 28, 2019, Respondent filed opposition to the Department's motion for summary decision; and

WHEREAS, on January 8, 2019, the Department filed a reply in support of summary decision; and

WHEREAS, on January 24, 2019, Tricia M. Caliguire, A.L.J. issued an Initial Decision granting summary decision in favor of the Department and against Respondent; and

WHEREAS, on April 4, 2019, the Commissioner issued a Final Decision and Order against Respondent, which suspended his producer license for two years and entered \$26,000.00 in civil penalties and \$400 in costs; and

WHEREAS, on May 17, 2019, Respondent filed a Notice of Appeal with the New Jersey Superior Court, Appellate Division; and

WHEREAS, Respondent admits and agrees to take responsibility for the violations set forth in the Order to Show Cause; and

WHEREAS, Respondent waives his right to continue his appeal of the Final Decision and Order, consents to suspension of his producer license beginning April 4, 2019 and ending on the date the Commissioner signs this Consent Order, and the payment of \$26,000.00 in civil penalties and \$400 in costs; and

WHEREAS, it appearing that this matter should be resolved upon the consent of the parties without continuing the currently-pending his appeal of the Final Decision and Order; and

WHEREAS, good cause exists to enter into this Consent Order and suspend Respondent's producer license pursuant to N.J.S.A. 17:22A-40(a); and

NOW, THEREFORE, IT IS on this *29th* day of *November*, 2019,

ORDERED AND AGREED, that Respondent admits and agrees to take responsibility for the aforementioned violations of the Producer Act and related regulations, as described in the Order to Show Cause; and


IT IS FURTHER ORDERED AND AGREED, that pursuant to N.J.S.A. 17:22A-40, the New Jersey insurance producer license of Respondent is hereby SUSPENDED from April 4, 2019 and ending the date the Commissioner signs this Consent Order; and

IT IS FURTHER ORDERED AND AGREED, that the suspension is subject to the terms of N.J.A.C. 11:17D-2.5, and upon expiration of the suspension term (on November 4, 2019), full payment to the Department of \$26,400.00, and proof of establishment of a trust account, Respondent's license may be reinstated pursuant to the terms of N.J.A.C. 11:17D-2.6; and

IT IS FURTHER ORDERED AND AGREED that this signed Consent Order together with proof satisfactory to the Commissioner that Respondent has established a trust account and payment of \$26,400.00, by certified check, cashier's check, money order or attorney trust account check be made payable to the "State of New Jersey, General Treasury," shall be remitted to:

Nicholas Kant, Deputy Attorney General
State of New Jersey, Division of Law
R.J. Hughes Justice Complex
25 Market Street, Second Floor West Wing
P.O. Box 117
Trenton, New Jersey 08625

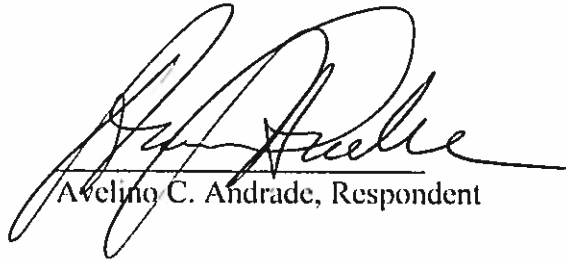
IT IS FURTHER ORDERED AND AGREED, that the provisions of this Consent Order represent a final agency decision and constitute final resolution of the currently-pending appeal before the Appellate Division, and the violations contained in the Order to Show Cause and this Consent Order.




Marlene Caride
Commissioner

Consented to as to Form, Content and Entry:

Date: 11/19/19



Avelino C. Andrade, Respondent

Date: 11/19/19


Glenn M. Race, Esq.
Counsel for Respondent

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
Attorney for the New Jersey
Department of Banking and Insurance

Date: Nov. 20, 2019


By: Nicholas Kant
Deputy Attorney General